

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Bresnan Communications, LLC)	WT Docket No. 16-319
Request for Waiver)	

**OPPOSITION OF T-MOBILE LICENSE LLC AND
BRESNAN COMMUNICATIONS, LLC**

T-Mobile License LLC (“T-Mobile”) and Bresnan Communications, LLC (“Bresnan,” and together with T-Mobile, the “Applicants”), pursuant to Section 1.115(d) of the Commission’s rules,^{1/} submit the following Opposition to the Application for Review filed by the Rural Wireless Association, Inc. (“RWA”) in the above-referenced proceeding.^{2/} The Wireless Telecommunications Bureau (“Bureau”) appropriately exercised its discretion in this case to provide a pathway for consumers in underserved and rural areas in Montana to realize the benefits of additional access to critical wireless broadband capacity. In order to preserve the significant benefits that the Waiver Letter conferred, the Commission should promptly dismiss the RWA Application.

As the Waiver Letter states, the Commission may grant a request for waiver if, among other things, the underlying purpose of the rule would not be served or would be frustrated by application to the instant case and grant of the waiver would be in the public interest.^{3/} RWA asserts that the Bureau erred because its action undermined the purpose of Section 27.14(g)(1)

^{1/} 47 C.F.R. § 1.115(d).

^{2/} Rural Wireless Association, Inc., Application for Review, WT Docket No. 16-319 (filed Jan. 23, 2017) (“RWA Application”); Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, DA 16-249, WT-Docket No. 16-319, rel. Dec. 21, 2016 (“Waiver Letter”).

^{3/} Waiver Letter at 3; 47 C.F.R. § 1.925(b)(3)(i).

(the “Acceleration Rule”). However, RWA relies on an inaccurate interpretation of the Acceleration Rule to make that claim.

RWA states that the “purpose of the Acceleration Rule is to prevent the warehousing of spectrum.”^{4/} However, that is not what the Commission said when it adopted the Acceleration Rule. To the contrary, as the Bureau noted in the Waiver Letter, the purpose of the Acceleration Rule is “to better promote access to spectrum and the provision of service, especially in rural areas.”^{5/} The Waiver Letter also found that the underlying purpose of the Acceleration Rule is to promote the introduction of new competitive services and access to spectrum and the provision of service, especially in rural areas.^{6/}

The Waiver Letter is consistent with the Commission’s goal of encouraging rapid deployment of network services. Rather than undermining the purpose of the Acceleration Rule, the Bureau’s waiver of the rule *promotes* the basis for its adoption. The Bureau found that the waiver would “serve the public interest by enabling, and indeed committing, T-Mobile to quickly bring new wireless services to remote areas of Montana and Wyoming, including Tribal areas that may otherwise continue to be underserved.”^{7/} The Bureau’s rationale for waiving the rule is therefore directly aligned with its underlying purpose, satisfying the requirement of Section 1.925(b)(3).

^{4/} RWA Application at 5.

^{5/} Waiver Letter at 3. The Commission reiterated this rationale several times in the *700 MHz Second Report and Order*. See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (“700 MHz Second Report and Order”). In particular, it stated: “Overall, we conclude that these set of stringent benchmarks . . . are the most effective way to promote rapid service to the public, especially in rural areas.” *Id.* at para. 155. And it concluded that “our approach should effectively promote service, including in rural areas.” *Id.* at para. 156. As the Application notes, RWA’s predecessor “repeatedly emphasized the importance of adopting rules that would prevent spectrum warehousing.” RWA Application at 5. But, as noted above, that was not the basis of the Commission’s adoption of the Acceleration Rule.

^{6/} Waiver Letter at 6.

^{7/} *Id.* at 1.

RWA also alleges that the Bureau erred in finding that the Applicants satisfied the second component of the waiver standard – that grant would be in the public interest. To support this assertion, RWA claims that “[t]he service promised by T-Mobile is speculative at best.”^{8/} RWA’s assertion ignores T-Mobile’s past performance and the conditions that the Bureau imposed on it. As the Applicants noted in the waiver request, T-Mobile quickly deploys its services and is known in the industry for its rapid build out.^{9/} And, the milestones the Bureau imposed on T-Mobile in this case will ensure that the goal of the Bureau’s decision – to ensure that service is delivered to the affected areas – is realized.^{10/} In fact, T-Mobile expects to satisfy imminently – over two months earlier than required – the Waiver Letter condition that it provide signal coverage and offer service to at least 35 percent of the license area covered by station WQJQ807 and will notify the Commission that it met this condition immediately thereafter.^{11/} In RWA’s view, the Bureau could never provide waiver relief subject to post-grant performance because such relief would always be “speculative.” Such a result would be contrary to the public interest in general and would be harmful to the affected areas in this case because they would lose the opportunity to have a competitive carrier in the marketplace.

RWA admits that grant of a waiver in this instance “might” result in faster deployment of service, but complains that the Bureau’s action “is likely to result in delays in service in scores of

^{8/} RWA Application at 7.

^{9/} See Bresnan Communications, LLC Request for Waiver, FCC Form 601, Attachment A at 3 (filed with the WTB Sept. 30, 2016); see also T-Mobile News Release, “T-Mobile Extended Range LTE Now Covers 240 Million People – and it’s Coming to Chicago” (Dec. 1, 2016), *available at* <https://newsroom.t-mobile.com/news-and-blogs/chicago-spectrum.htm>; T-Mobile News Release “T-Mobile Delivers Strong Customer Growth AND Financial Results” (Oct. 24, 2016), *available at* <https://newsroom.t-mobile.com/news-and-blogs/q3-2016-earnings.htm>.

^{10/} If T-Mobile does not meet those milestones it will lose authorization to provide service in the affected areas.

^{11/} Waiver Letter at 6.

other markets as licensees will now know that the Commission's buildout rules have no teeth."^{12/} RWA's assertion is baseless and effectively assumes that the Bureau will not adhere to the requirements to carefully evaluate any future waiver requests on their own merits.^{13/} Moreover, in this instance, it is clear that service will be provided more quickly to the affected areas, consistent with the intent of the Acceleration Rule.^{14/}

Finally, RWA complains that the Bureau's action is inconsistent with the Commission's statement that it did not envision granting waivers or extensions of construction periods except for circumstances beyond the licensee's control.^{15/} The wording in the *700 MHz Second Report and Order* mirrors Section 1.946(e)(1), governing requests for extension of time. However, the Bureau made it clear that it was not acting pursuant to that rule. Accordingly, its action was not inconsistent with the *700 MHz Second Report and Order*.

Even if the Bureau's action could be interpreted as providing relief from Section 1.946(e)(1) of the rules, it would not be barred from acting under the *700 MHz Second Report and Order*. The Commission's statements notwithstanding, it did not surrender its broad discretion to grant waivers of its rules based on expectations expressed nearly ten years ago.^{16/}

^{12/} RWA Application at 6.

^{13/} RWA's argument that the Waiver Letter "establishes a precedent" is similarly without merit. RWA Application at 8. The Commission is required to evaluate waiver requests based on the circumstances presented. *See, e.g., Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Report and Order*, PS Docket Nos. 11-153 and 10-255, 28 FCC Rcd 7556, 7578 (2013) ("Waivers or exemptions from [the Commission's] requirements are best suited to a case-by-case analysis under the waiver standard, where the facts and circumstances of each individual case can be determined on its own merits."). In this case, the Bureau correctly found that circumstances merited a waiver. RWA's argument assumes that the Bureau will violate its obligation in the future and fail to consider the circumstances in particular cases.

^{14/} RWA also continues to argue that the public interest would be better served.

^{15/} RWA Application at 7; *see also* Second Report and Order at para. 153.

^{16/} *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (1969) ("[A]n

Indeed, the Bureau has broad discretion when acting for the Commission on applications for rule waivers, as it may waive a rule's requirements "for good cause shown."^{17/} As the Waiver Letter made clear, this was an appropriate exercise of the Bureau's discretion because the waiver serves the public interest by allowing T-Mobile to more quickly promote spectrum access in three of the most rural areas in the United States, which will, in turn, promote competition with other wireless providers in the markets.^{18/} The Commission should therefore act promptly to dismiss the RWA Application.

Respectfully submitted,

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application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

^{17/} 47 C.F.R. § 1.3.

^{18/} Waiver Letter at 6.

CERTIFICATE OF SERVICE

I, Christen B'anca Glenn, hereby certify that on February 7, 2017, a copy of the foregoing Opposition of T-Mobile License LLC and Bresnan Communications, LLC was served by first-class mail, postage paid, on each of the following:

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